No. 78-277

In the Supreme Court of the United States

OCTOBER TERM, 1978

DOYON, LIMITED, AND BERING STRAITS NATIVE CORPORATION, PETITIONERS

v.

BRISTOL BAY NATIVE CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals is reported at 569 F. 2d 491 (Pet. App. A). The opinion of the district court is reported at 417 F. Supp. 900 (Pet. App. B).

JURISDICTION

The judgment of the court of appeals was entered February 3, 1978. A timely petition for rehearing was denied on May 25, 1978 (Pet. App. C). The petition for a writ of certiorari was filed August 18, 1978. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Native members of a village that elected to take title to their former reservations in lieu of all other benefits under the Alaska Native Claims Settlement Act should nevertheless be counted as Natives of their region for purposes of calculating the Regional Corporation's proportional share of Alaska Native Fund distributions.

STATUTE INVOLVED

Although the Alaska Native Claims Settlement Act, 43 U.S.C. (Supp. V) 1601, *et seq.* (the Settlement Act) must be read as a whole to decide the question presented, we reproduce here for easy reference those sections of the Act most directly involved.

Section 6(c) of the Act, 43 U.S.C. 1605(c) provides:

> After completion of the roll prepared pursuant to section 1604 of this title, all money in the Fund, except money reserved as provided in section 1619 of this title for the payment of attorney and other fees, shall be distributed at the end of each three months of the fiscal year among the Regional Corporations organized pursuant to Section 1606 of this title on the basis of the relative numbers of Natives enrolled in each region. The share of a Regional Corporation that has not been organized shall be retained in the Fund until the Regional Corporation is organized.

Section 7 of the Act, 43 U.S.C. 1606, provides in part:

> (g) The Regional Corporation shall be authorized to issue such number of shares of common stock, divided into such classes of shares as may be specified in the articles of incorporation to reflect the provisions of this chapter, as may be needed to issue one hundred shares of stock to each Native enrolled in the region pursuant to section 1604 of this title.
>
> * * * * *
>
> (i) Seventy per centum of all revenues received by each Regional Corporation from the timber resources and subsurface estate patented to it pursuant to this chapter shall be divided annually by the Regional Corporation among all twelve Regional Corporations organized pursuant to this section according to the number of Natives enrolled in each region pursuant to section 1604 of this title. The provisions of this subsection shall not apply to the thirteenth Regional Corporation if organized pursuant to subsection (c) hereof.

Section 12(b) of the Act, 43 U.S.C. 1611(b), provides:

> (b) The difference between twenty-two million acres and the total acreage selected by Village Corporations pursuant to subsection (a) of this section shall be allocated by the Secretary among the eleven Regional Corporations (which excludes the Regional Corporation for southeastern Alaska) on the basis of the number of Natives enrolled in each region. Each Regional Corporation shall reallocate such acreage among the Native villages within the region on an equitable basis after considering historic use, subsistence needs, and population. The action of the Secretary or the Corporation shall not be subject to judicial review. Each Village Corporation shall select the acreage allocated to it from the lands withdrawn by section 1610(a) of this title.

Section 19(b) of the Act, 43 U.S.C. 1618(b), provides:

> Notwithstanding any other provision of law or of this chapter, any Village Corporation or Corporations may elect within two years to acquire title to the

surface and subsurface estates in any reserve set aside for the use or benefit of its stockholders or members prior to December 18, 1971. If two or more villages are located on such reserve the election must be made by all of the members or stockholders of the Village Corporations concerned. In such event, the Secretary shall convey the land to the Village Corporation or Corporations, subject to valid existing rights as provided in section 1613(g) of this title, and the Village Corporation shall not be eligible for any other land selections under this chapter or to any distribution of Regional Corporation funds pursuant to section 1606 of this title, and the enrolled residents of the Village Corporation shall not be eligible to receive Regional Corporation stock.

STATEMENT

The Alaska Native Claims Settlement Act represents a comprehensive legislative scheme to equitably settle the aboriginal claims of the Alaska Natives. Both direct monetary benefits and land allocations are encompassed. By this suit, Doyon and Bering Straits, two of the thirteen Regional Corporations created by the Settlement Act to distribute and administer the settlement benefits for the Natives, sought to invalidate the formula used by the Secretary of the Interior to divide and distribute the direct monetary benefits appropriated by Congress. Because of the structure of the Act, the resolution of this dispute over the monetary benefits will affect the distribution of land benefits and revenues from those lands as well. Consequently, the Secretary of the Interior, as well as the other

eleven Regional Corporations representing Native stockholders, have an interest and are all parties to this case.[1]

1. The present issue arose after the Secretary had completed the roll required by Section 5 of the Act, 43 U.S.C. 1604, which listed all Alaska Natives and indicated the region and village or other residence of each. Although enrolled to their respective regions, the Natives in six villages with reservations established by Executive or Secretarial Orders before passage of the Settlement Act made the election permitted by Section 19(b) of the Act, 43 U.S.C. 1618(b). They decided to take title to the surface and subsurface estate in their former reserves in lieu of any further participation in the Settlement Act's other benefits, including land selections and Alaska Native Fund distributions. By virtue of this choice, these residents of Section 19(b) villages are not eligible to receive regional corporation stock, the mechanism through which monetary benefits of the Act are distributed to the eligible Natives. See Sections 19(b) and 7 of the Act, 43 U.S.C. 1618(b) and 1606.

This controversy directly concerns the determination of the relative shares of the $962,500,000 Alaska Native Fund to be distributed over a period of years to each of the 13 Regional Corporations for support of and redistribution to their Native stockholders. In calculating the shares of the Doyon and Bering Straits Regional

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[1]Because of the stake each region has in the question presented, the United States District Court for the District of Columbia, where this suit was originally filed only against the federal officials, transferred the case to the Alaska district court so that all the Regional Corporations could be joined. *Doyon, Ltd.* v. *Kleppe*, D. D.C., Civil Action No. 74-1463. Once transferred, the complaint was amended to add all the remaining Regional Corporations as defendants.

Corporations the Secretary did not include Natives enrolled to the six Section 19(b) villages. Although these Natives were enrolled to those regions in the Section 5 roll, and Section 6(c) states that the Regional Corporation shares are to be calculated from the relative "* * * number of Natives enrolled in each region," the Secretary concluded that the Act required him to exclude these Section 19(b) Natives in calculating the regions' respective shares. Because Section 19(b) villages and Natives could not share in any of the Act's general benefits, the Secretary reasoned that it would be inequitable to permit the Regional Corporation (and its Native stockholders and Village Corporations) which surrounded these villages to count Section 19(b) Natives in determining the region's distributive shares of the Act's benefits. For, if they were counted, the eligible Native stockholders of such a region would each receive a large per capita distribution, in derogation of the fundamental rule of equality which the Act establishes. See letter of September 25, 1974, from Solicitor, Department of the Interior, to Mr. Arthur Lazarus, Jr., Pet. App. D. If these Section 19(b) Natives are *not* counted in the Fund distribution formula, each Native stockholder in the thirteen Regional Corporations receives an equal dollar distribution through his Regional Corporation. However, if the Section 19(b) Natives *are* counted, then the Doyon Regional Corporation would receive $355 more for each Native stockholder, Bering Straits $1,834 more for each stockholder and the other regions $239 less per stockholder.

The same operative phrase, "number of Natives enrolled in each region," also prescribes the way other benefits under the Settlement Act are distributed. Each of the following distributions is affected by the contruction of this phrase:

(a) The relative shares of the division of natural resource revenues from lands held by the Regional Corporations. Section 7(i), 43 U.S.C. 1606(i).

(b) The Secretary's allocation of certain amounts of land to Regional Corporations for reallocation to Village Corporations within each region. No judicial review of this Secretarial action is permitted. Section 12(b), 43 U.S.C. 1611(b).

(c) The number of shares of common stock each Regional Corporation is authorized to issue. Section 7(g), 43 U.S.C. 1606(g).

2. In the district court, the question presented here was the third of three issues considered and perhaps received least attention (Pet. App. 20a-27a). At all events, when it addressed the present issue, the court read the language of the Act literally and concluded that Section 19(b) Natives must be counted for Fund distribution purposes and for natural resources revenue redistribution purposes. The court did note that on a per capita basis the Native stockholders in Doyon and Bering Straits Regional Corporations would be favored by this reading of the Act, Doyon and Bering Straits receiving $16 million more than the other regions for each $1 billion of resource revenues distributed under Section 7(i) (Pet. App. 27a, n. 7). Still, the court rejected arguments that its construction of the Act produced an inequitable result (Pet. App. 30a).

The court of appeals reversed (Pet. App. 1a-19a). It held that the term "Native" in certain portions of the Act, including those at issue, was intended to refer to stockholders of the Regional Corporations. The court concluded that, in the absence of evidence of the contrary, it must prefer that construction of the Act which produces the greatest equality of benefits among eligible Natives. The legislative history of the Act, the court of

appeals found (Pet. App. 8a-9a), clearly indicted that "* * * Congress intended the regions to share as nearly as possible on an equal basis, and did not intend to sanction disparate distribution of the Fund based on unforeseen semantic problems." Pet. App. 8a. Accordingly, the court ruled that only stockholders are to be counted in calculating distributive shares for each Regional Corporation. Pet. App. 9a-10a.

The dissenting judge did not view the case as presenting not conflict with any decision of this Court or any other court of appeals. It accords appropriate deference to the administrative construction of the Act, permitting the that the words of the statute are unambiguously defined (Pet. App. 16a), the dissent concluded that any inequality was intentional (Pet. App. 18a).

ARGUMENT

The decision of the court of appeals is correct. It does not conflict with any decision of this Court or any other court of appeals. It accords appropriate deference to the administrative construction of the Act, permitting the Secretary of the Interior to complete the scheme of distribution without delay. In these circumstances, review by this Court if not warranted.

1. The court of appeals properly resorted to the legislative history to aid its resolution of the issue of statutory construction. As *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1, 10 (1976), teaches, it is seldom safe to rely entirely on the apparently "plain meaning" of a statutory term. See also *United States* v. *America Trucking Ass'ns.*, 310 U.S. 534, 543-544 (1940);

Cass v. *United States*, 417 U.S. 72, 77-79 (1974). Especially is this so when the operative phrase is nowhere defined in the statute.[2]

2. When we look behind the words to the structure of the Settlement Act and its legislative history, the correctness of the decision below is clear. The expressed purpose of the Act is to accomplish a rapid, fair, and just settlement of the aboriginal land claims of the Alaska Natives. Section 2(a) and (b), 43 U.S.C. 1601(a) and (b). However, by application of the literal words of Sections 6(c), 7(g), 7(i), and 12(b) of the Act (as discussed above), the Natives in two areas of Alaska would receive a larger settlement, because of Section 19(b) elections in those areas. On its face, this would not be a fair and just settlement to all the Natives.

Other provisions of the Act confirm the congressional intent to equalize the settlement benefits on a per Native basis. Natives in those villages which meet the qualifications to receive benefits (see Sections 11 and 16, 43 U.S.C. 1610 and 1615) were to organize into Village corporations under State law, with the Native residents of each village as stockholders, as a prerequisite to receiving settlement benefits. Section 8, 43 U.S.C. 1607. The Secretary divided Alaska into twelve regions composed of Natives with common heritage or interests and the Natives incorporated a Regional Corporation for each region to be eligible to receive settlement benefits. Section 7(a) and (d), 43 U.S.C. 1606(a) and (d). Each Regional Corporation was authorized to issue 100 shares of common stock to each Native, but Natives in Section 19b)

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[2]The dissent below (Pet. App. 16a) is in error in suggesting that "Natives enrolled" has a "statutorily-defined meaning."

villages are ineligible to receive stock. Management of each Regional Corporation is vested in a board of directors who must all be stockholders.

Monetary benefits from the Alaska Native Fund, Section 6(c), and the natural resources revenue distribution system, Section 7(i) (which, as noted, are predicated on relative Native population of each region), are distributed through the Regional Corporations and the Village Corporations for the benefit of their Native stockholders. Section 7(j), 43 U.S.C. 1606(j). Division of these monies among Village Corporations is on an equal per share basis. Section 7(k), 43 U.S.C. 1606(k).[3]

Land benefits of the Settlement Act are similarly divided in a manner which attempts to give each Native an equal share. In the first round of land selection, the acreage that each Village Corporation is entitled to select is directly porportional to that village's Native population. Sections 12(a)(1) and 14(a), 43 U.S.C. 1611(a)(1) and 1613(a). In the second round, the additional acreage allocated to Regional Corporations and reallocated by them to the Village Corporations is based on relative Native population. Section 12(b), 43 U.S.C. 1611(b). In the third round, Regional Corporation selections are reduced by the amount of round 1 and 2 selections and thus have the same Native base.

Surface patents to acreage selected by or reallocated to Village Corporations are also directly related to Native

[3]Provision is even made for equating the dividend to a Native stockholder of a Regional Corporation who is not also a Village Corporation stockholder with his village resident and stockholding brethren. Section 7(m), 43 U.S.C. 1606(m). For the 13th Regional Corporation, which has no land base, the minimum distribution share is raised to compensate for the absence of revenue-producing land benefits. Section 7(j).

population. Section 14(a), 43 U.S.C. 1613(a). Patents to Regional Corporations of the subsurface estate in Village Corporation land and the entire estate in lands directly selected by the Regional Corporations are tied to the equality-per-Native principle through the selection process. Section 14(e) and (f), 43 U.S.C. 1613(e) and (f). Even that portion of the two million remaining acres of the Act's 40 million-acre total benefit left after special equalizing provisions for certain otherwise overlooked interests are allocated and conveyed to the Regional Corporations on the basis of relative populations. Section 14(h)(8), 43 U.S.C. 1613(h)(8).

These provisions sufficiently reveal that equality per Native is the consistent goal. The artificial entities of Regional Corporations and Village Corporations are only a means to filter the Act's benefits down to the individual Natives by coordinated investment and distribution so as to provide ongoing support and a long-range economic base for the Natives.

To be sure, precise equality can never be achieved where land distributions are involved because of the unique character of each piece of land.[4] But where mone-

[4]Those portions of the Act cited by petitioners as negating the equality intent (Pet. 21 n. 11) actually support the equality-of-settlement purpose of the Act. When fairly read (as discussed above) those sections cited by petitioners demonstrate the lengths to which Congress went to equalize the land aspects of the settlement. The villages of the Southeast region were treated differently from the other eligible Native villages because the Natives of those villages had already received compensation by the judgment in *Tlingit and Haida Indians of Alaska* v. *United States*, 389 F. 2d 778 (Ct. Cl. 1968), in settlement of their aboriginal claims. These Village Corporations receive a patent to only one-third as much land as other villages because Congress, again striving for equality, viewed that judicial distribution as "* * * in lieu of the additional acreage to be conveyed * * *" to the other Alaska villages. Section 16(c), 43 U.S.C. 1615(c).

tary distributions are involved, exact equality is the rule. As the Senate Report recites (S. Rep. No. 92-405, 92d Cong., 1st Sess. 64, 79 (1971), emphasis added).[5]

> All revenue distributions are made on a basis that is directly proportionate to the population to insure *equal and fair treatment*.
>
> * * * * *
>
> [A]ll eligible Natives regardless of their ethnic affiliation of their location are entitled to an *equal share* of the assets provided * * *.

The House Report repeats the theme (H.R. Rep. No. 92-523, 92d Cong., 1st Sess. 6 (1971), emphasis added).[6]

> In order that all Natives may *benefit equally* from any minerals discovered within a particular region, each corporation must share its mineral revenues with the other 11 corporations *on the basis of the relative numbers of stockholders in each region*.

Indeed, here is a clear explanation that the phrase at issue, "Natives enrolled in each region" Section 7(i)), was intended to reach stockholders only, as the Secretary and the court of appeals concluded.

3. Finally, we note that the decision of the court of appeals conforms with the administrative construction of the Settlement Act by the Department of the Interior. It is, after all, the Secretary of the Interior who primarily administers the Act. He performs every federal function under the statute, except only for holding of Fund monies

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[5]See also, S. Rep. No. 92-405, *supra*, at 120, 122.

[6]See also, H.R. Rep. No. 92-523, *supra*, at 3, 15, 16, 20; H.R. Rep. No. 92-746, 92d Cong., 1st Sess. 34, 35, 36, 40 (1971).

in the United States Treasury. And, as even the dissent below notes (Pet. App. 17a), the Secretary "participated extensively in assisting Congress in its formulation of [the Act]."

In these circumstances, deference is due to the Secretary's construction. *Udall* v. *Tallman*, 380 U.S. 1, 16 (1964). See, also, *E.I. DuPont de Nemours & Co.* v. Train, 430 U.S. 112, 134-135 (1977); *Train* v. *Natural Resources Defense Council*, 421 U.S. 60, 87 (1975). As the two last cited cases make clear, that principle is not confined, as petitioners suggest (Pet. 23-24), only to "longstanding" administrative interpretation. In the Settlement Act, Congress has delegated important decisions to the Secretary of the Interior, relying on his special experience in this field. The courts, also, may properly accord weight to his understanding of the task assigned to him under the statute.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1978

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